

**LEGISLATIVE SERVICES AGENCY  
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**FISCAL IMPACT STATEMENT**

**LS 7390**  
**BILL NUMBER:** HB 1432

**NOTE PREPARED:** Apr 21, 2015  
**BILL AMENDED:** Mar 31, 2015

**SUBJECT:** Regulation of E-Liquids.

**FIRST AUTHOR:** Rep. Mahan  
**FIRST SPONSOR:** Sen. Yoder

**BILL STATUS:** Enrolled

**FUNDS AFFECTED:** ☒ **GENERAL**  
☒ **DEDICATED**  
**FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** This bill contains the following provisions:

1. Defines "e-liquid" as a substance that is intended to be vaporized and inhaled using a vapor pen.
2. Requires a manufacturer of e-liquid to obtain a permit from the Alcohol and Tobacco Commission (ATC) before bottling e-liquid or selling e-liquid to retailers or distributors.
3. Provides that the initial application for a manufacturing permit must include: (a) plans for the applicant's manufacturing facility; (b) a service agreement between the applicant and a security firm requiring the security firm to certify that the manufacturer meets certain security requirements; and (c) an application fee of \$1,000.
4. Provides that a manufacturer's permit is valid for five years and establishes requirements for permit renewal, including a \$500 permit renewal application fee.
5. Establishes requirements for e-liquid retailers, distributors, and manufacturers.
6. Limits the ingredients that can be used in making e-liquids.
7. Provides for the suspension or revocation of a manufacturer's permit and the assessment of a civil penalty against a manufacturer for a violation of the law.
8. Provides that a retailer who knowingly: (a) sells e-liquid to a minor; (b) sells e-liquid purchased from a manufacturer that does not have a permit; or (c) sells e-liquid that has been altered or tampered with; commits a Class C infraction.
9. Makes other unauthorized actions involving e-liquid a Class A infraction.
10. Authorizes a permit holder to bring a civil action against an e-liquid producer that distributes e-liquid not approved for sale in Indiana.

**Effective Date:** July 1, 2015.

**Explanation of State Expenditures:** *Alcohol and Tobacco Commission:* The bill states that the ATC would be responsible for the enforcement and administration of the permits and regulations of e-liquids. The bill requires the ATC, among other duties and responsibilities, to issue permits, audit facilities that manufacture e-liquids, and ensure that e-liquid manufactured or sold in Indiana conforms to certain standards. The bill's requirements represent an additional workload on the ATC. However, the ATC may charge fees to cover the costs of administration.

*State Police Department:* The bill requires the Indiana State Police Department (ISP) to complete a state or national criminal history background check of all applicants for e-liquid manufacturing permits. The total increase in costs to the ISP will depend on the number of people applying for manufacturing permits. If the ISP does not need to hire an additional person to conduct the additional background checks, the costs would likely be offset by the fees charged to persons requesting background checks. (Under the bill, an applicant would be responsible for covering the cost of a background check.)

**Explanation of State Revenues:** *Summary* - This bill could potentially increase revenue to the state General Fund and other state funds from the following sources.

Revenue Source	Fund(s) Affected
Manufacturing permit application fees	General Fund
Criminal history background check fees	General Fund; Indiana Office of Technology Portal Fund
Tobacco sales certificates	Enforcement and Administration Fund
Distributor's licenses	General Fund
Civil penalties for permit violations	General Fund
Civil penalties for illegal sales of e-liquids	Richard D. Doyle Youth Tobacco Education/Enforcement Fund
Court fees	General Fund; State User Fee Fund

**Additional Information** -

*Manufacturing Permits:* The bill requires manufacturers of e-liquid to obtain a permit from the ATC by June 30, 2016. The initial application fee is \$1,000. Permits must be renewed every five years, and applicants are required to pay a renewal fee of \$500. These provisions could result in a one-time increase in revenue, depending on the number of applicants for manufacturing permits, and a smaller increase in revenue every five years thereafter, depending on the number of manufacturers applying for renewal. Revenue from application fees would be deposited in the state General Fund.

(Revised) *Certificate and License Fees:* The bill also requires that all e-liquid retailers, distributors, and manufacturers that mix, bottle, or sell e-liquid in Indiana must remove all e-liquid that is not in compliance with the bill's provisions from inventory or obtain a tobacco sales certificate, an e-liquid manufacturing permit, or a tobacco products distributor's license before July 1, 2016. To the extent that this provision increases the number of tobacco sales certificates or distributor's licenses issued, revenue from license fees would increase. The annual fee for a distributor's license is \$25 for each location and is deposited in the state General Fund. The fee for a tobacco sales certificate is \$200 per location, which is paid every three years,

and is deposited in the Enforcement and Administration Fund.

*Criminal History Background Checks:* The fee for a state criminal history background check is \$7, \$15, or \$16.32, depending on the manner in which the request is submitted. Revenue is deposited in the General Fund and the Indiana Office of Technology Portal Fund. Persons requesting a national criminal history check pay a \$9.95 vendor processing fee, a \$14.50 or \$13 FBI fee, and a \$15 State Police fee which is deposited in the General Fund.

*Permit Violations:* If a manufacturer violates the terms of the permit, the manufacturer may be reprimanded, assessed a civil penalty of up to \$10,000, or have the manufacturer's permit suspended. Revenue to the General Fund could increase to the extent that the ATC assesses civil penalties on e-liquid manufacturers. The total increase will ultimately depend on the ATC's decisions regarding penalties.

*Illegal Sales of E-Liquids:* The bill makes it a Class C infraction for a retailer to knowingly sell e-liquid (1) to a person under the age of 18, (2) purchased from a manufacturer that does not have a permit, or (3) that has been altered or tampered with. The penalty is enhanced to a Class B infraction, habitual illegal sale of e-liquid, if the person commits at least six violations within a 180-day period. Civil judgments may be imposed in the following maximum amounts:

- \$200 for the first violation within the previous 180 days
- \$400 for the second violation within the previous 180 days
- \$700 for the third violation within the previous 180 days
- \$1,000 for subsequent violations within the previous 180 days

Civil penalties collected under this provision would be deposited in the Richard D. Doyle Youth Tobacco Education and Enforcement Fund.

*Court Fee Revenue:* The bill makes it a Class A infraction for a person to manufacture e-liquid without a permit and for a person to receive e-liquid from a person that does not hold a valid permit. It also allows a permittee to bring a civil action for violations of the e-liquids laws.

If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil costs fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court.

In addition, some or all of the judicial salaries fee (\$20), public defense administration fee (\$5), court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund. Revenue from the pro bono services fee (\$1) is transferred by the State Auditor to the Indiana Bar Foundation for use to assist with pro bono legal services programs in Indiana. Proceeds from the automated record keeping fee (\$5) are deposited into the State User Fee Fund.

### **Explanation of Local Expenditures:**

**Explanation of Local Revenues:** *Court Fee Revenue:* If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If

the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge, depending upon the particular type of case.

Persons filing a civil case are also required to pay the document storage fee (\$2), document fees (\$1 per document), and service fee (\$10), which are deposited in local funds.

**State Agencies Affected:** ATC, ISP, State Department of Health.

**Local Agencies Affected:** Trial courts, city and town courts.

**Information Sources:**

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